

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MSSI, INC.,

Plaintiff,

v.

J.E. DUNN CONSTRUCTION COMPANY,
DLR GROUP, INC., FEDERAL
INSURANCE COMPANY, TRAVELERS
CASUALTY AND SURETY COMPANY
OF AMERICA, and HARTFORD FIRE
INSURANCE COMPANY,

Defendants.

8:23CV45

ORDER

This matter is before the Court on several motions: a Motion to Dismiss for failure to state a claim filed by defendant DLR Group, Inc. (“DLR”) (Filing No. 18); a Motion to Dismiss for lack of subject-matter jurisdiction filed by defendants Cornerstone Detention Products, Inc. (“Cornerstone”), Federal Insurance Company, Travelers Casualty and Surety Company of America, and Hartford Fire Insurance Company (Filing No. 23); a Motion to Dismiss for failure to state a claim and lack of subject-matter jurisdiction filed by defendant J.E. Dunn Construction Company (“J.E. Dunn”) (Filing No. 24); and a Voluntary Dismissal without Prejudice of Defendant Cornerstone Detention Products, Inc. (Filing No. 35) filed by plaintiff MSSI, Inc. (“MSSI”) (Filing No. 35).

On March 15, 2023, MSSI voluntarily moved to dismiss Cornerstone (Filing No. 35) and filed a First Amended Complaint (Filing No. 36) omitting Cornerstone as a defendant. Because of the filing of the First Amended Complaint, MSSI’s motion to dismiss Cornerstone is moot. *See* Fed. R. Civ. P. 15(a) (stating a plaintiff can amend its complaint “once as a matter of course” within 21 days after service of a 12(b) motion).

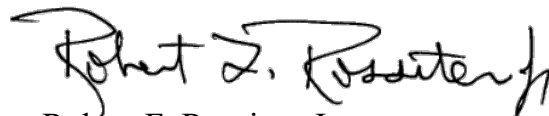
Given that DLR and J.E. Dunn have each since moved to dismiss the First Amended Complaint (Filings No. 41 and 44), and the remaining defendants answered the First Amended Complaint (Filing No. 43), the motions to dismiss the original complaint will be denied as moot as well. *See Pure Country, Inc. v. Sigma Chi Fraternity*, 312 F.3d 952, 956 (8th Cir. 2002) (“If anything, [the plaintiff’s] motion to amend the complaint rendered moot [the defendant’s] motion to dismiss the original complaint.”). Accordingly,

IT IS ORDERED:

1. MSSI, Inc.’s Voluntary Dismissal without Prejudice of Defendant Cornerstone Detention Products, Inc. (Filing No. 35) is denied as moot.
2. Defendant DLR Group, Inc.’s Motion to Dismiss (Filing No. 18) is denied as moot.
3. Defendants Cornerstone Detention Products, Inc.’s, Federal Insurance Company’s, Travelers Casualty and Surety Company of America’s, and Hartford Fire Insurance Company’s Motion to Dismiss (Filing No. 23) is denied as moot.
4. Defendant J.E. Dunn Construction Company’s Motion to Dismiss (Filing No. 24) is denied as moot.

Dated this 11th day of April 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.
Chief United States District Judge